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**CONFIDENTIAL**

**TO: Art Unit: 3643**

**FAX#: 571-273-8300**

**ADDRESS:**

**U.S. Patent and Trademark Office**

**P.O. Box 1450, Alexandria, VA 22313-1450**

**EXAMINER PHONE: D. Ark 703-272-6885**

Transmitted here with regarding Attorney docket no. 50180, Application Serial No. 10/821,041,  
Filed 4/8/2004, are the following:

☒ Fax Transmittal Form

☒ It is believed that no request for extension of time or fees are due. Notwithstanding, the  
Commissioner is authorized to charge any additional fees incurred or credit any overage to  
Deposit Account No.50-1753 ( 50111 ). Please regard this as a further request for extension of  
time to the extent one is needed. (Customer Account Number 22929)

☒ Response to Office Action Made Final Mailed 11-29-06

☒ Copy of Request to Correct Inventorship in 09/736,023

☒ Copy of Supplemental Declaration in regard to the application 09/736,023

**I hereby certify that this correspondence and all correspondence identified as  
accompanying this correspondence is being transmitted by facsimile and  
addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA  
22313-1450 on December 6, 2006.**

  
Sue Z. Shaper, Reg. No. 31663

9 PAGE(S) TO FOLLOW THIS COVER SHEET

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PLEASE CALL 713 550 5710**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Metcalfe

Application No.: 10/821,041

Filed: 4/8/2004

Title: Method and Apparatus for Controlling Pests

Attorney Docket No.: 50180

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Art Unit: 3643

Examiner: Ark

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RESPONSE TO OFFICE ACTION

MADE FINAL

MAILED 11-29-06

Dear Sir:

In response to the Office Action of June 21, 2006, please amend this application as follows:

In the claims:

Please amend the claims as per the attached claim amendment sheet.

REMARKS

Applicant respectfully submits that the finality of the Office Action mailed 11-29-06 was premature, and requests that the finality be rescinded, especially in light of the below.

(1) Technically, rejection of claims 38 and 39 under §112 had not been made previously and was not caused by an amendment in the prior response.

(2) Importantly, rejection of claims 23-30 was "provisional" under obviousness-type double patenting. Applicant submits that it was premature to make that provisional rejection final. The claims to which it applies are not known. Some claims were not otherwise rejected.

The attached papers, evidencing a request to correct inventorship in application in 09/736,023, indicate that the instant application is a proper continuation of co-pending application 09/736,023.

Further, in regard to the issue of obviousness-type double patenting, the Examiner will shortly be in position to ascertain the claims issuing in application number 09/736,023, as a request to issue the allowed claims will accompany the request to correct inventorship in that application. Further, an assignment of that application to the assignee of the instant application will also be filed. Hence, a terminal disclaimer will be able to be filed in the instant case.

In response to the claim rejections under §112: (1) applicant provisionally cancels claims 37-39 herein, provisional upon the amended claims being deemed allowable. Although applicant does not agree that claims 37-39 lack enablement or fail to meet the written description requirement, these

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claims are dependent claims. Since it appears, that the remaining claims are allowable, it is not worth appealing a rejection under §112 of three dependent claims.

The rejection of claims 32-41, 43 and 46 under §112 has been corrected by an amendment hereto, adding to claim 32 twice the two words "of a" in the body of the claim so that the claims reads consistently. Such addition is in the order of a technical or formal correction or amendment. Similarly, claims 44 and 45 have been corrected to place them in proper form. As multiple dependent claims, they now refer to the other claims in the alternative only. This also is a technical or formal amendment.

The only substantive or art-based rejections remaining are rejections of claims 1, 2, 4, 5, 7 and 48 over Latwesen under §102 and of claims 3, 5/2, 5/3, 6 and 31 over Latwesen under §103. In the prior response, applicant pointed out that applicant claimed priority to an application anti-dating Latwesen. Thus, Latwesen did not comprise prior art. The Examiner responded that the unsolved inventorship issue precluded the Examiner from considering the instant application as a proper continuation of a co-pending application number 09/736,023. That inventorship issue has been resolved, and the instant application is a proper continuation of co-pending 09/736,023.

Reconsideration and further examination is respectfully requested, including setting aside the finality of the action mailed 11/29/06 as premature.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Sue Z. Shaper, Applicants' Attorney at 713 550 5710 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sue Z. Shaper  
Attorney/Agent for Applicant(s)  
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